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Supreme Court of the United States.

OCTOBER TERM, 1940.

REED & PRINCE MANUFACTURING COMPANY,
Petitioner,
v.
NATIONAL LABOR RELATIONS BOARD,
Respondent.

CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

PETITION.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioner, Reed & Prince Manufacturing Company (hereinafter referred to as the Company), prays that a writ of certiorari be issued by this Court to review the decree of the United States Circuit Court of Appeals for the First Circuit, entered in the above-entitled cause on April 2, 1941, enforcing an order of the National Labor Relations Board (hereinafter called the Board).

JURISDICTION.

The decree of the Circuit Court of Appeals for the First Circuit was entered April 2, 1941 (R. 2102). The jurisdic-

tion of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925 (43 Stat. 938; 28 U.S.C. 347 (a)), and under Section 10 (e) and (f) of the National Labor Relations Act (49 Stat. 449; 29 U.S.C. 151).

Statute Involved.

The statute involved is the National Labor Relations Act (hereinafter called the Act), the pertinent provisions of which are set forth in Appendix A to this petition.

Opinion Below.

The opinion of the Circuit Court of Appeals for the First Circuit (R. 2071 ff.) has not yet been reported. The decision of respondent National Labor Relations Board (R. 1999-2046) is reported in 12 N.L.R.B. 944.

Statement.

Proceedings before the Board.

Charges and amended charges having been filed by the Steel Workers Organizing Committee of the C.I.O., a labor organization herein referred to as the Union, the Board, by its Regional Director at Boston, Massachusetts, on November 17, 1937, issued its complaint, charging the Company with (1) refusal to bargain collectively with the Union as the exclusive representative of the Company's employees; (2) discharging and refusing to reinstate four individuals because of alleged Union activities; and (3) carrying on a campaign of propaganda against the Union alleged to have been designed to discourage Union membership and to en-

courage a back-to-work movement and to induce the employees to sign individual contracts with the Company.

The complaint alleged that the Company thereby had engaged in unfair labor practices affecting commerce in violation of Section 8 (1), 8 (3) and 8 (5) of the Act (R. 13-18, 20).

In answer to the complaint the Company admitted that it was engaged in interstate commerce, but denied the alleged unfair labor practices (R. 21-31).

One Charles Ward Johnson, an attorney, filed a motion to intervene on behalf of 542 out of a total of 782 production and maintenance employees. The intervening petition denied all of the material allegations of the Board's complaint (R. 36-41).

A hearing was held at Worcester, Massachusetts, between December 6, 1937, and January 17, 1938, before a Trial Examiner designated by the Board. The Board, the Company, the Union, and Charles Ward Johnson, on behalf of the intervening petitioners, participated in the hearing.

On April 23, 1938, the Trial Examiner filed an intermediate report finding that the petitioner had violated Section 8 (1), 8 (3) and 8 (5) of the Act (R. 1924-1958). The Company and intervenors filed exceptions to the report (R. 1961-1997). Oral argument was had before the Board in Washington, D.C., on October 27, 1938, the Company and the Union participating (R. 1998). On May 15, 1939, the Board issued its decision and order (R. 1999-2046).

Board's Decision and Order.

The decision and order of the Board is reported in full in the record on pages 1999 to 2046.

Upon the findings made therein the Board concluded that the Company had violated Section 8 (1), 8 (3) and 8 (5) of the Act and entered an order directing the Company to cease

and desist from discouraging membership in the Union or any labor organization by discrimination in regard to hire or tenure of employment, etc.; from giving effect to the contract or contracts executed between the Company and its employees on July 13, 1937; from refusing to bargain collectively with the Union; from interfering with, restraining or coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act. The order also affirmatively directed the Company to bargain with the Union, reinstate four former employees with back pay and post notice of compliance with the order.

The Facts.

By March 19, 1937, 703 of the 782 employees in the maintenance and production departments had signed cards accepting membership in the Union (R. 2004). A preliminary contract was signed on March 19, 1937, by and between the Company and the Union, by the terms of which the Company, upon the insistence of the Union, recognized the Union as the collective bargaining agency for the Company's employees who were members of the Union.

After five collective bargaining conferences in April and May, the parties had agreed on recognition, wages, hours of work, vacations and a minimum-wage provision (R. 2009). A strike was called by the Union on May 25, 1937 (R. 2009).

On June 2, 1937, the Company sent the Union representative a signed contract containing, among other things, all the terms which had been agreed upon during the prior negotiations. The Union refused to accept this contract.

On June 4 and 5, 1937 (R. 1793-2010), a conciliator from the United States Department of Labor met with representatives of the Union and the Company, after which the conciliator stated that he felt that all the differences could be settled if the Company would agree to a substitution of

the word "umpire" for the word "court" in the contract submitted by the Company (R. 2022-2023, 1938, 1362, 242).

On June 23, 1937, the Company filed a bill in equity in the Superior Court for the County of Worcester and Commonwealth of Massachusetts praying for an injunction seeking to enjoin the strike (R. 1094). On June 28, 1937, the Company engaged in further collective bargaining with the Union before the State Board of Arbitration and Conciliation.

On July 12, 1937, the Superior Court, after hearings on June 30 and June 31, 1937, participated in by the Company and the Union, issued an injunction prohibiting all strike activity, including picketing, the use of opprobrious epithets and any annoyance, threats or intimidation directed toward any employees who desired to return to work. The Superior Court made findings of fact and rulings of law to the effect that the strike was illegal, one of its principal purposes being to compel the Company to assent to the Union's demand for compulsory arbitration in place of due process of law (R. 1862-1864).

By July 12, 1937, 411 of the Company's employees had signed back-to-work petitions (R. 2019). On July 13, 1937, these 411 had caused their signatures to be attached to the contract which had been submitted by the Company to the Union. Subsequently 107 more employees affixed their signatures to this contract (R. 2020-2021). On July 12, 1937, the Company mailed identification cards to many of the employees for whom immediate work was available, inviting them back to work, including three of the four individuals whose reinstatement is now ordered by the Board. A copy of the injunction order was also mailed to all employees on July 12, 1937 (R. 1096, 1866, 1867).

On July 14, 1937, the plant was reopened. On July 15, 1937, an announcement was made by the Company that jobs

were being created in spite of the absence of orders and that all would be taken back to work without discrimination (R. 1096). The president and other officers of the Union and members of its negotiating committee were also re-employed (R. 301).

The Union, however, did not immediately call off the strike, notwithstanding the injunction, and continued to maintain pickets at the plant from July 12th to July 15th (R. 236). On July 15th the Union leaders addressed a Union meeting and advised the continuance of the strike and picketing in defiance of the injunction. It was decided to put a picket line around the plant, and a group of about 200 or more composed of Union members and sympathizers marched from the Union meeting and formed a picket line at the entrance to the Company's plant. As a result 60 or 70 police officers arrived at the scene (R. 245-246). In this group were the four employees whose reinstatement is now ordered by the Board. These four individuals in question, together with three Union organizers, were arrested by the police for continuing to yell "scab" and "rat" after refusing to heed repeated warnings (R. 245-246, 289-290, 304, 403, 404, 408, 1028, 1029, 1047, 1048, 1050).

After the arrests the Company announced to the four individuals who applied for re-employment that they would not be reinstated until they had cleared themselves of the charges for which they were arrested. One of the four, Mary Sullivan, never applied for reinstatement after her conviction in court and merely assumed that she would be told, as had the other three, that she had not cleared her name (R. 305, 306). On July 22, 1937, these four individuals were tried in the local District Court (R. 2036-2037). On July 22, 1937, these four individuals were found guilty of disturbing the peace and the complaints were placed on file (R. 1864-1866, 413).

After the illegal strike was called on May 25, 1937, the Company communicated with its employees by mail, radio talks and newspaper publicity, discussing the merits of the controversy between the Company and the Union, criticizing the illegal strike and the conduct of the Union leaders, and urging the employees to exercise their voting rights in the Union to discontinue the illegal strike. This so-called propaganda ceased entirely on June 14, 1937.

There is no finding by the Board that any unfair labor practice on the part of the Company preceded the calling of the strike on May 25, 1937. The Board found that the Union insisted upon a contract on behalf of its members only (R. 2033).

In January, 1938, one Charles Ward Johnson, an attorney, filed an amended motion to intervene in these proceedings on behalf of 547 employees, seeking to protect their rights under their executed contracts and denying the allegations of the Board's complaint (R. 2035-2036).

Questions Presented.

1. Whether the Board, by virtue of its authority as derived from the National Labor Relations Act, had jurisdiction or authority to order the reinstatement of four former employees of the Company under the following undisputed circumstances:

(*a*) These individuals had participated in a strike which was adjudicated by the courts of the Commonwealth of Massachusetts, and admitted by the Board, to have been an illegal strike under the laws of said Commonwealth.

(*b*) Said strike was not found to have been caused or preceded by any unfair labor practice on the part of the Company.

(*c*) These individuals had been enjoined by the Superior Court for the County of Worcester in said Commonwealth from engaging in any strike activity, including picketing of the Company's plant, or interfering with its business.

(*d*) After the issuance of said injunction and notice thereof to said individuals, they had been invited back to work by the Company.

(*e*) Following said injunction and invitation these individuals refused to go back to work and continued to engage in unlawful strike activity, including picketing; attended a Union meeting, where they were exhorted by Union leaders to defy the injunction, and marched in a body of about two hundred persons to the Company's plant and participated in mass picketing on and near the plant.

(*f*) These four individuals were arrested by the voluntary act of the local police, after repeated warnings by the police, for disturbing the peace, under circumstances which made riot and violence imminent, and they were all adjudicated guilty after a hearing in court, and the complaints were placed on file.

(*g*) These four individuals were refused employment upon application therefor after their arrest and prior to the court hearing, until they had cleared their names of the charges made against them by the police. One of said individuals never applied for re-employment after conviction in court.

(*h*) All other former employees who had applied for re-employment after the strike, including Union officials, were re-employed by the Company.

In summary, did the admittedly unlawful conduct of these four individuals preclude the exercise of the power by the Board to order their reinstatement?

2. Whether the Board's findings and orders were predicated upon an erroneous view that the National Labor Relations Act has restricted and limited the exercise of an employer's constitutional right of freedom of speech, and said order was therefore invalid.

3. Whether the Board's finding that the Company committed an unfair labor practice in violation of the Act by refusing to engage in collective bargaining with its employees, and the Board's order pursuant thereto, were warranted as a matter of law in view of the admitted fact that the Union at no time sought or purported to bargain on behalf of *all* of the Company's employees, but on the contrary at all times insisted upon bargaining on behalf of *its members only.*

4. Whether the Board's order of May 15, 1939, requiring the Company to bargain collectively with the Union, after a large majority of the employees had voluntarily executed contracts with the Company on July 13, 1937, and had intervened in these proceedings six months later, indicating that the Union no longer was authorized to act on their behalf, was warranted in the absence of an election as to the choice of a bargaining agency.

5. Whether the scope of the Board's orders is too broad in view of the specific unfair labor practices found to have been committed.

Petitioner's Contentions.

1. The unlawful conduct of the four individuals in question deprived the Board of legal power to order their reinstatement within the principle of *N.L.R.B.* v. *Fansteel Metallurgical Corp.*, 306 U.S. 240. (Supporting Brief, *infra*, pp. 12-13.)

2. The Board's statutory power of reinstatement is limited to "employees" and is restricted to remedial and not punitive orders. (Supporting Brief, *infra*, p. 14.)

3. The Board found that the Company's communications with its employees constituted a violation of Section 8 (1) of the Act and the decision clearly indicates that the finding of violation of Section 8 (3) and 8 (5) was predicated upon the erroneous and prejudicial conclusion that the Company's communications to its employees constituted an unfair labor practice. The Company contends that all of the Board's conclusions as to the commission of unfair labor practices by the Company and the Board's orders pursuant thereto are invalid because predicated upon an erroneous interpretation of the Act in violation of the First Amendment of the Constitution. (Supporting Brief, *infra*, p. 15.)

4. The Union's insistence and demand at all times to bargain on behalf of its members only, who did not comprise all of the employees of the Company, absolved the Company from any duty to bargain with the Union, and the Board's finding that the Company violated Section 8 (5) of the Act and its orders with reference thereto are therefore invalid. (Supporting Brief, p. 16.)

5. Under the circumstances of this case the Board exceeded its authority in directing the Company to continue to bargain collectively with the Union without first directing an election to be held to determine the choice of the employees as to a bargaining agency. (Supporting Brief, p. 17.)

6. The scope of the Board's orders in the form in which they were directed to be enforced by the Court below is too broad in view of the specific unfair labor practices found to have been committed. (Supporting Brief, p. 18.)

Reasons for Granting the Writ.

The case here presented for review, it is respectfully submitted, constitutes an arbitrary and unwarranted exercise by the Board of its high judicial function, in that the

Board's findings and orders are in direct conflict with the decision of this Court in the case of *N.L.R.B.* v. *Fansteel Metallurgical Corp.*, 306 U.S. 240, are predicated upon an erroneous interpretation of the Act, and constitute an invasion of the Company's constitutional rights.

The decision of the Board and the Court below also involves important questions of Federal law which have not been, but which should be, settled by this Court. A determination of these issues by this Court appears to be important for the future proper administration of the Act.

It is therefore respectfully submitted that this case is one calling for the exercise by this Court of its supervisory powers, and this Court should review the decision of the Circuit Court of Appeals for the First Circuit and finally reverse it.

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JAY CLARK, JR.,
GEORGE H. MASON,
Of Counsel.

May 10, 1941.

BRIEF IN SUPPORT OF PETITION.

Specification of Errors.

The Circuit Court of Appeals erred—

1. In holding that the Board had power to order reinstatement of the four individuals in question notwithstanding that they had been guilty of the unlawful conduct specified more particularly at pp. 7-8, *supra*.

2. In holding that the Act required the Company to engage in collective bargaining with the Union, notwithstanding its admitted insistence at all times upon bargaining on behalf of its members only.

3. In affirming and enforcing the Board's orders, which were based on an erroneous conception that the Act restricted an employer's right to express its views to its employees during the course of a labor dispute.

4. In enforcing the order of the Board directing the Company to engage in collective bargaining with the Union in the absence of an election to determine choice of the employees as to a bargaining agency.

5. In enforcing paragraph 1 (d) of the Board's order.

6. In enforcing the order of the Board against the Company.

Argument.

Point I.

The admitted unlawful conduct of the four individuals in question deprived the Board of legal power to order their reinstatement under the Act.

Under Massachusetts law the strike was an illegal strike to force the Company to accept compulsory arbitration in place of due process of law. *Folsom Engraving Co.* v. *McNeil*, 235 Mass. 269; *Reynolds* v. *Davis*, 198 Mass. 294.

These four individuals continued to strike and picket in deliberate violation of a court injunction and were arrested and convicted for a breach of the peace on and near the Company's plant inciting to violence and riot. Under these circumstances the Board and the Court below appear to ignore the clear import of the decision in the case of *N.L.R.B.* v. *Fansteel Metallurgical Corp.*, 306 U.S. 240.

The Court below attempted to distinguish the Fansteel case on the basis of the decisions in the cases of—*Republic Steel Corp.* v. *N.L.R.B.*, 107 F. (2d) 472 (C.C.A. 3);* *N.L.R.B.* v. *Stackpole Carbon Co.*, 105 F. (2d) 167 (C.C.A 3)—in which orders of the Board requiring reinstatement of employees guilty of minor disturbances on the picket line were enforced. These cases, however, rested clearly upon a finding that the offenses committed were in no way designed to effect any compulsion upon the employer and are, therefore, obviously distinguishable from the case at bar.

The only reasons given by the Company for the refusal to re-employ these four individuals was their violation of the injunction and arrest for breach of the peace. The Board's finding of discriminatory discharge rests conspicuously upon its inference of an anti-Union attitude upon the part of the Company alleged to have been disclosed in its communications to its employees, after the unlawful strike had begun.

The drawing of such conclusions has been repeatedly condemned. *Consolidated Edison Co.* v. *N.L.R.B.*, 305 U.S. 197; *N.L.R.B.* v. *Columbian Enameling & Stamping Co.*, 306 U.S. 292; *N.L.R.B.* v. *Remington Rand Inc.*, 94 F. (2d) 862 (C.C.A. 2); *N.L.R.B.* v. *Union Pacific Stages Inc.*, 99 F. (2d) 153 (C.C.A. 9); *N.L.R.B.* v. *Asheville Hosiery Co.*, 108 F. (2d) 288 (C.C.A. 4); *Ballston-Stillwater Knitting Co.* v. *N.L.R.B.*, 98 F. (2d) 758 (C.C.A. 2); *Jefferson Electric Co.* v. *N.L.R.B.*, 102 F. (2d) 949; *N.L.R.B.* v. *Thompson Prod-*

*Limited certiorari granted, 60 Sup. Ct. 1072.

ucts Inc., 97 F. (2d) 13 (C.C.A. 6); *N.L.R.B.* v. *Empire Furniture Corp.*, 107 F. (2d) 92 (C.C.A. 6); *Burlington Dyeing & Finishing Co.* v. *N.L.R.B.*, 104 F. (2d) 736 (C.C.A. 4).

The Board's authority is limited to remedial and not punitive orders, and the Act clearly preserves the employer's right to discharge employees for cause, whether they be at work or on strike. *N.L.R.B.* v. *Jones & Laughlin Steel Corp.*, 301 U.S. 1; *Consolidated Edison Co.* v. *N.L.R.B.*, 305 U.S. 197.

The refusal of the four individuals in question to accept an invitation to return to work following the injunction and their subsequent unlawful conduct and conviction in court removed these individuals from the status of "employees" within the definition of Section 2 (3) of the Act and the authority conferred by Section 10 (c) of the Act, and the Board was therefore without power to order their reinstatement. *N.L.R.B.* v. *Fansteel Metallurgical Corp.*, 306 U.S. 240.

The Board expressly found that, even if the Company's refusal to reinstate these four individuals did not constitute an unfair labor practice, nevertheless, in the opinion of the Board, a reinstatement order was necessary to effectuate the purpose of the Act (R. 2042-2043). The Board has no punitive powers. The following statement of this Court in *Consolidated Edison Co.* v. *N.L.R.B.*, 305 U.S. 197, is pertinent:

> "This authority to order affirmative action does not go so far as to confer a punitive jurisdiction enabling the Board to inflict upon the employer any penalty it may choose because he is engaged in unfair labor practices, even though the Board be of the opinion that the policies of the Act might be effectuated by such an order."

Point II.

The Board's erroneous assumption that the Company, in communicating with its employees, committed an unfair labor practice in violation of Section 8 (1), and upon which finding the conclusions as to violations of Section 8 (3) and 8 (5) were largely predicated, rendered the Board's findings and orders invalid.

While the Court below held that the Board erred in finding that the Company's communications with its employees constituted a violation of Section 8 (1) of the Act, it is respectfully submitted that said Court erred in enforcing the orders of the Board which were based in large measure upon the Board's misconception of the Act. The Board in its decision repeatedly referred to the communications sent by the Company to its employees as the basis for many of its findings, and the Board's unfair, illogical and improper inferences demonstrated a lack of substantial evidence to support its findings and a strong desire to punish the Company for the communications sent to its employees.

The Board's major premise in the case was in conflict with the Constitutional guaranty of freedom of speech and press, as recently expressed in the case of *N.L.R.B.* v. *Ford Motor Co.*, 114 F. (2d) 905 (C.C.A. 6).

Since the Board's conclusions as to a discriminatory discharge of the four individuals in question, the alleged absence of good faith on the part of the Company in collective bargaining, and the back-to-work movement and contracts signed by a majority of the employees with the Company were all founded upon the major premise by the Board that the Company had no right to communicate its views to its employees, the Board's orders were therefore based upon an erroneous view of the law, were unsupported by substantial evidence, and consequently invalid.

Point III.

The Company was not required to engage in collective bargaining with the Union, which at all times insisted upon bargaining in behalf of its members only, and the Board's findings and orders with reference to collective bargaining are therefore invalid.

Section 8 (5) makes it an unfair labor practice for an employer "to refuse to bargain collectively with the representative of his employees subject to the provisions of Section 9 (a)." Section 9 (a) provides that representatives designated by a majority of employees shall be the exclusive representative of all the employees for the purpose of collective bargaining, etc. Consequently, if a majority Union refuses to proceed under Section 9 (a) one of the conditions to the existence of the employer's duty under Section 8 (5) is not met. It would seem to follow that an employer can refuse with legal impunity to enter into any negotiations at all concerning a members-only contract, even with a majority Union.

The Board and the Court below attempted to dismiss this contention on the ground that the Company, notwithstanding the insistence of the Union for a members-only contract, stated that it would offer the benefits of any contract finally negotiated to all of its employees. It is submitted that such voluntary and optional offer on the part of the Company, which would give the non-member employees no enforcible rights, would not have the effect of constituting the subsequent negotiations or request for negotiations by the Union collective bargaining within the requirements and purview of the Act.

While this specific question does not appear to have been passed on by any Court, the cases of—*National Licorice Co.* v. *N.L.R.B.*, 309 U.S. 350 and *N.L.R.B.* v. *Biles-Coleman Lumber Co.*, 98 F. (2d) 758 (C.C.A. 2)—would seem to support the Company's view. In those cases it was held that

an employer was guilty of a clear violation of the Act by insisting upon recognizing the Union as a representative of its members only for the purpose of collective bargaining. Conversely it is submitted that a majority Union does not lay a proper foundation for collective bargaining under the Act by purporting to act and insisting upon a contract for its members only. The Board and the Court below appear to confuse what an employer is required to do under the Act as distinguished from what it may voluntarily do.

Point IV.

Under the circumstances of this case it was an arbitrary exercise of the Board's power to direct the Company to bargain with the Union two years or more after a large majority of the employees had executed contracts with the Company and had intervened in these proceedings to preserve their rights under these contracts, without requiring an election to determine the employees' choice of a bargaining agency.

On July 13, 1937, 518 employees executed a contract with the Company, said contract being the one which the Union refused to sign (R. 2020-2021).

The Board found that the execution of these contracts by these employees was a result of the Company's communications to the employees (R. 2021). Six months later an independent attorney filed an amended motion to intervene in these proceedings on behalf of 547 employees (R. 41), including all who had signed the contracts on July 13, 1937, and about 117 others, seeking to protect their rights under said contracts. The Board, reversing the Trial Examiner's ruling, allowed this attorney's motion to intervene on behalf of all 547 intervenors (R. 2036). No propaganda was found to have been directed by the Company to its employees after June 14, 1937.

It is submitted that the Board's order directing the Company to bargain collectively with the Union on behalf of all employees, without an election, denies to the employees the full enjoyment of the rights guaranteed under Section 7 of the Act. On this theory this Court, in *National Licorice Co.* v. *N.L.R.B.*, 309 U.S. 350, approved the action of the lower Court in requiring an election to determine whether the Union was still the choice of a majority of the employees.

Likewise, in *N.L.R.B.* v. *Fansteel Metallurgical Corp.*, 306 U.S. 240, where the Board's order was made approximately one year after the plant was reopened, as compared with approximately two years in the case at bar (now approximately three and one-half years), this Court took cognizance of a change in the status of the Union's representation of a majority of the employees and found that there was no basis for a conclusion that the Union remained the choice of a majority of the employees for the purpose of collective bargaining. The Court there refused to enforce the Board's order requiring the Company to bargain with the Union in the altered circumstances and suggested that the Board had abundant authority to settle the question by ordering an election.

See also *Hamilton-Brown Shoe Co.* v. *N.L.R.B.*, 104 F. (2d) 49 (C.C.A. 8).

Point V.

Paragraph 1 (d) of the Board's order, approved by the Court below, is not warranted.

Paragraph 1 (d) of the Board's order directed the Company to cease and desist from interfering with the rights of its employees guaranteed by Section 7 of the Act, in the phraseology of Section 8 (1). The Board in its order directed that the complaint be dismissed in so far as it alleged that the Company had engaged in unfair labor practices within the meaning of Section 8 (2) of the Act (R. 2046).

The Court below refused to confirm the Board's decision and order in so far as it found that the Company's communications with its employees constituted a violation of Section 8 (1) of the Act. The Court below, however, confirmed paragraph 1 (d) of the Board's order directing the Company to cease and desist from interfering with the rights guaranteed under Section 7, because of the findings that the Company had refused to bargain in violation of Section 8 (5) and had been guilty of discriminatory discharges of four employees in violation of Section 8 (3), and on the further ground that the individual contracts signed between the Company and a large majority of its employees constituted a violation of Section 8 (1).

It is submitted that the scope of paragraph 1 (d) of the Board's order under the circumstances of this case is too broad, within the principle of the decision in *N.L.R.B.* v. *Express Publishing Co.*, 61 Sup. Ct. Rep. 696, March 3, 1941.

Conclusion.

The Board's orders as confirmed and enforced by the Circuit Court of Appeals are therefore erroneous as a matter of law, unwarranted by the evidence, and constitute an arbitrary and improper exercise of the powers vested in the Board by the Act. The issues here presented raise important questions of Federal law and the enforcement of said orders would work unreasonable hardships on the Company. We respectfully urge that this Court grant the writ.

Respectfully submitted,

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Attorney for Petitioner.

Jay Clark, Jr.,
George H. Mason,
Of Counsel.

May 10, 1941.

APPENDIX A.

Statutes Involved.

National Labor Relations Act (49 Stat. 449, 29 U.S.C. Supp. V, Sec. 151 *et seq.;* Public Act 198, 74th Congress, approved July 5, 1935):

§ **152. Definitions.** When used in sections 151 to 166 of this title—

. . . . . .

(3) The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer, unless the chapter explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse.

§ **157. Right of employees as to organization, collective bargaining, etc.** Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection. (July 5, 1935, c. 372, § 7, 49 Stat. 452.)

§ **158. Unfair labor practices by employer defined.** It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 157 of this title.

(2) To dominate or interfere with the formation or administration of any labor organization or contribute finan-

cial or other support to it: *Provided,* That subject to rules and regulations made and published by the Board pursuant to section 156 of this title, an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay.

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided,* That nothing in this chapter, or in sections 701 to 712 of Title 15, or in any code or agreement approved or prescribed thereunder, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this chapter as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in section 159 (a) of this title, in the appropriate collective bargaining unit covered by such agreement when made.

(4) To discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this chapter.

(5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 159 (a) of this title. (July 5, 1935, c. 372, § 8, 49 Stat. 452.)

§ 159. **Representatives of employees for collective bargaining; determination of unit by Board; question affecting commerce, hearing; record on review where commerce questions involved.** (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to

rates of pay, wages, hours of employment, or other conditions of employment: *Provided,* That any individual employee or a group of employees shall have the right at any time to present grievances to their employer.

§ 160. **Prevention of unfair labor practices—**

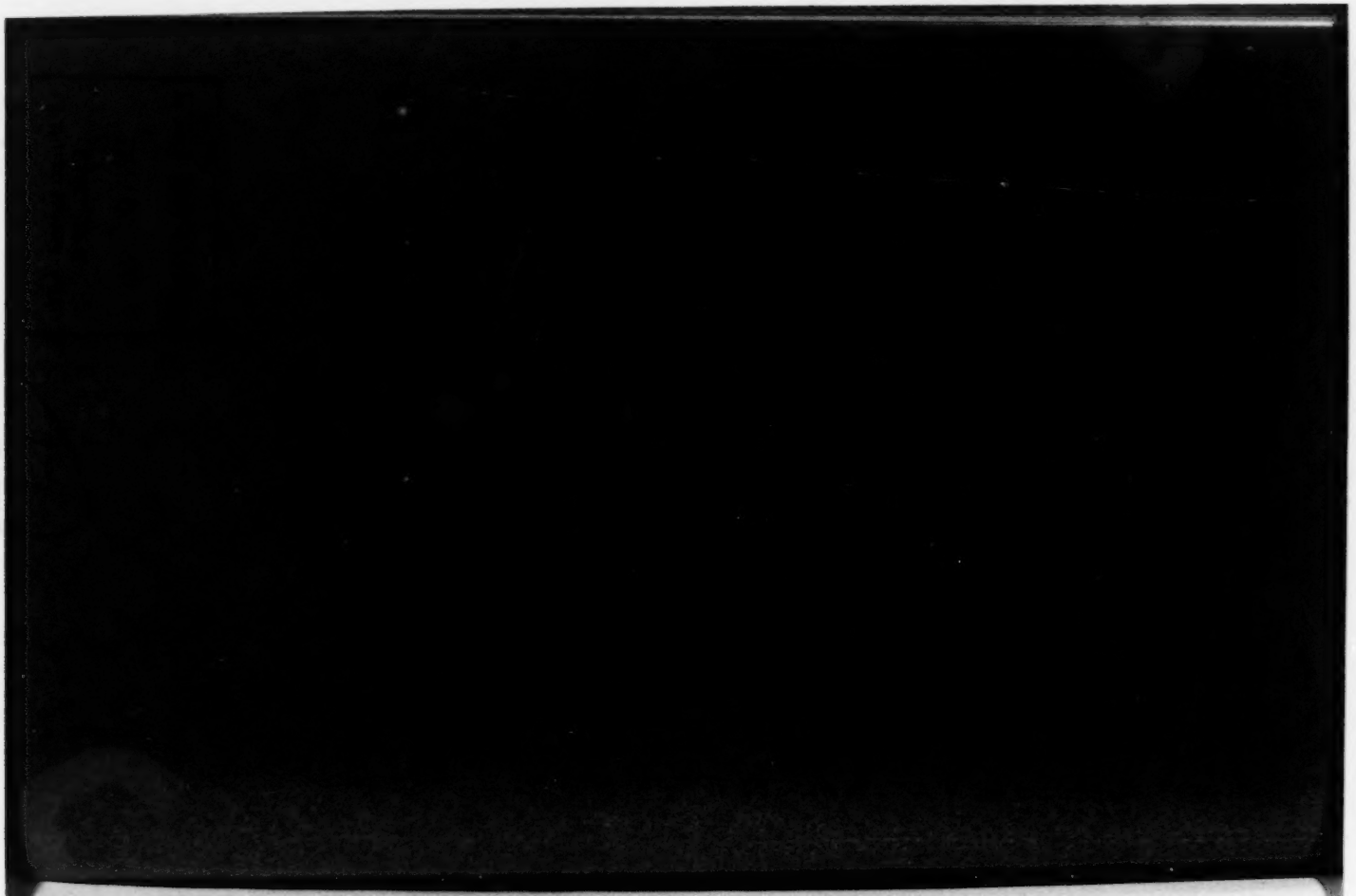
. . . . . .

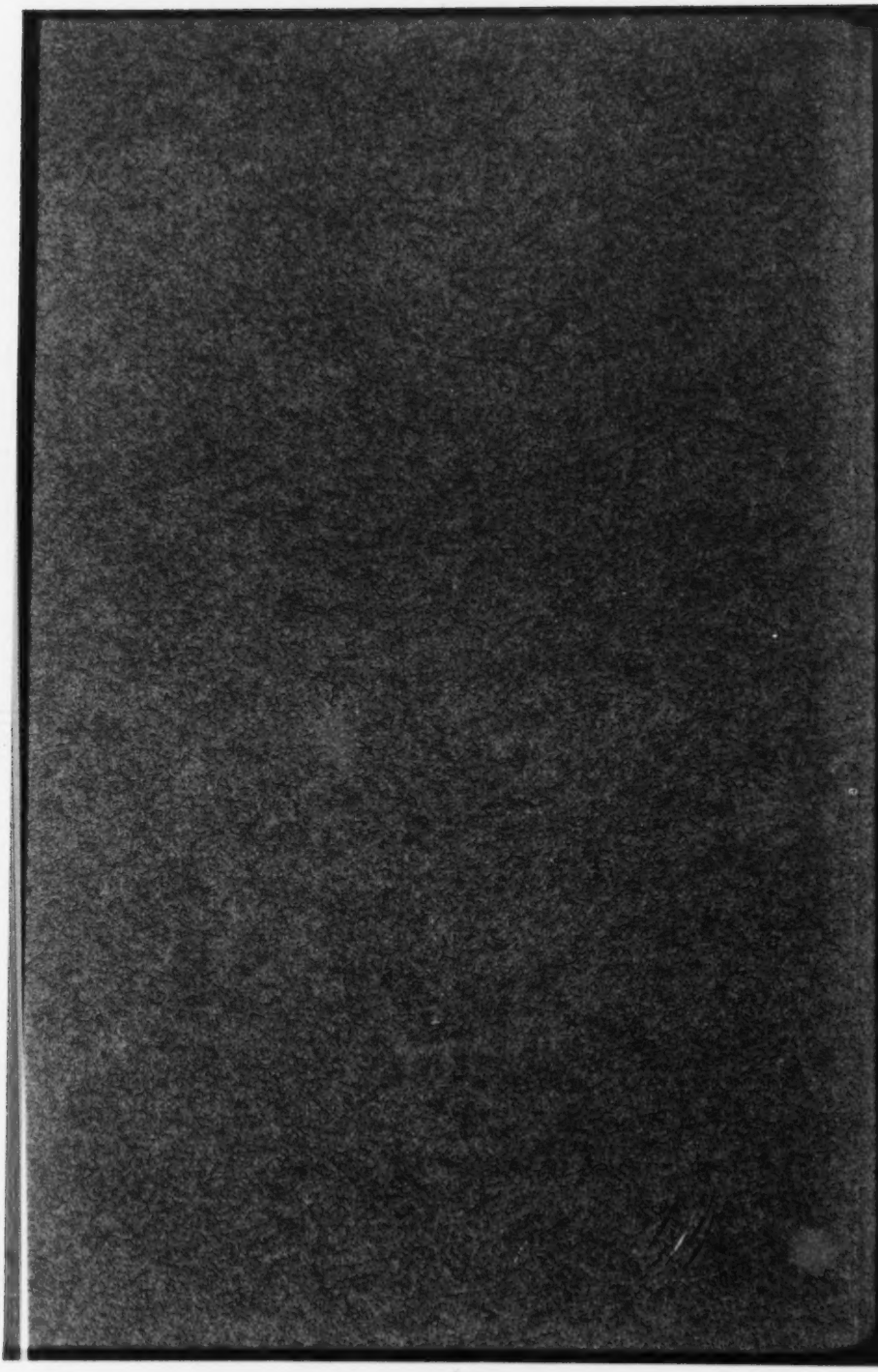
(e) Petition to court for enforcement of order; proceedings; review of judgment. The Board shall have power to petition any circuit court of appeals of the United States (including the Court of Appeals of the District of Columbia), or if all the circuit courts of appeals to which application may be made are in vacation, any district court of the United States (including the Supreme Court of the District of Columbia), within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceeding, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board as to the facts, if supported by evidence, shall be conclusive. If either

party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its member, agent, or agency, and to be made a part of the transcript. The Board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which, if supported by evidence, shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate circuit court of appeals if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in sections 346 and 347 of Title 28.

(f) Review of final order of Board on petition to court. Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any circuit court of appeals of the United States in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the Court of Appeals of the District of Columbia, by filing in such court a written petition praying that the order of the Board be modified or set aside. A copy of such petition shall be forthwith served upon the Board, and thereupon the aggrieved party shall file in the court a transcript of the entire record in the proceeding, certified by the Board, including the pleading and testimony upon which the order complained of was entered and the findings and order of

the Board. Upon such filing, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e), and shall have the same exclusive jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board; and the findings of the Board as to the facts, if supported by evidence, shall in like manner be conclusive.





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In the Supreme Court of the United States

OCTOBER TERM, 1940

No. 1052

REED & PRINCE MANUFACTURING COMPANY,
PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The opinion of the court below (R. 2070–2099) is not yet reported. The findings of fact, conclusions of law, and order of the National Labor Relations Board (R. 1999–2046) are reported in 12 N. L. R. B. 944.

JURISDICTION

The decree of the court below (R. 2099–2101) was entered on April 2, 1941. The jurisdiction of this Court is invoked under Section 240 (a) of

the Judicial Code, as amended by the Act of February 13, 1925, and under Section 10 (e) and (f) of the National Labor Relations Act.

QUESTIONS PRESENTED

1. Whether, upon findings that petitioner discriminatorily refused to reinstate certain employees in violation of the Act, the Board had power to require the reinstatement of such employees although they participated in a strike which was illegal under special doctrines of state law and committed minor misconduct on the picket line.

2. Whether the Board's decision and order abridged petitioner's right of freedom of speech, in violation of the First Amendment.

3. Whether petitioner was absolved of all obligation to bargain collectively pursuant to Section 8 (5) of the Act by reason of the fact that the Union, although representing a majority of the employees in an appropriate unit, sought a contractual provision granting it representation of its members only, where the parties at all times were in agreement that the provisions of the contract would in fact be extended to all employees in the unit and where petitioner's refusal to bargain was not based upon the "members only" clause.

4. Whether it was within the Board's power to remedy petitioner's refusal to bargain with a labor organization representing a majority of its employees by directing petitioner to bargain, upon request, with that organization, or whether such

an order was precluded by possible dissipation of the organization's majority representation, where the Board found that such dissipation, if it occurred, was attributable to petitioner's unfair labor practices.

5. Whether the Board, in the circumstances of this case, could properly require petitioner to cease and desist from "in any other manner interfering with, restraining, or coercing its employees in the exercise of their rights" guaranteed in Section 7 of the Act.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act are set out in the Appendix to the petition (pp. 20–24).

STATEMENT

Upon the usual proceedings, the Board issued its findings of fact, conclusion of law, and order (R. 1999–2046). The facts, as found by the Board and as shown by the evidence, may be summarized as follows:[1]

By March 19, 1937, more than 700 of petitioner's 782 employees in an appropriate unit had joined the Steel Workers Organizing Committee, herein referred to as the Union (R. 2003–2005; 102–105, 117–118, 664–665, 1779, 1781). Petitioner then

[1] In the following statement, the references preceding the semicolons are to the Board's findings and the succeeding references are to the supporting evidence.

entered into a preliminary agreement with the Union; by its terms the contract was limited in application to the members of that organization, but petitioner applied the provisions of the contract to all of its employees (R. 2005–2006, 2034; 1772–1773). In further conferences held prior to May 19, 1937, with a view to negotiating a final contract, the parties reached a tentative agreement concerning wages, hours, and vacations (R. 2006–2009; 113–114, 133–148, 1056–1081, 1774–1778). With reference to union recognition, it was agreed that, pursuant to the Union's request, the contract would in terms recognize the Union as the representative of its members, but that petitioner would notify all employees that any contractual provisions agreed to between the petitioner and the Union would apply to all of them (R. 2033–2034; 343–345, 353, 1059, 1132, 1362, 1774).

On May 25 the Union called a strike because of dilatory tactics on the part of petitioner (R. 2009; 148–150, 236). During the strike petitioner submitted to the Union and publicized a proposed agreement containing clauses which petitioner knew were unacceptable to the Union, including a provision binding the Union never to seek either a closed shop or the check-off of dues "at any time in the future" (R. 2010–2011, 141–143, 1071, 339, 597–598, 1077–1078, 1776–1778, 1793–1800, 1809–1812). Petitioner likewise engaged in a vigorous compaign designed to destroy the employees' allegiance to the Union and to compel acceptance,

through means other than collective bargaining, of the form of agreement proposed by petitioner (R. 2011–2033). Petitioner's tactics included (a) the rebuff, after June 5, of all efforts by the Union to resume negotiations; and (b) various communications directed to the employees, castigating the Union and its leaders in abusive and insulting terms, distorting the Union's demands so as to discredit its motives and impugn its Americanism, making thinly veiled threats that acceptance of petitioner's form of contract was an essential prerequisite to reinstatement, and charging that the Union was ignoring the wishes of a majority of its members and seeking instead to advance its own interests at the employees' expense (R. 2011–2035, 472–481, 1802–1829, 511–512, 1921–1922, 153–155, 1387–1389, 650, 1839–1843, 157–159, 1094–1095, 1117, 1250–1251, 1328–1329).

Petitioner's campaign brought results: a "back-to-work" movement of familiar pattern gained momentum and by July 12, 411 of the 782 employees had signed petitions expressing their desire to abandon the strike and to accept the contract which petitioner had unsuccessfully and in bad faith proposed to the Union (R. 2016–2022; 671–674, 692–693, 696–699, 880–887, 892, 907, 913, 934, 990–991, 1436, 1464–1466, 1469). On July 13 the signatures of these 411 employees were attached to a contract which was practically identical in its substantive terms with the contract espoused by petitioner; subsequently the signatures of other employees

were added (R. 2020–2021; 705–707, 802–803, 1793–1800, 1830–1838). The strike was broken. On July 14 petitioner reopened its plant, and on the afternoon of the next day the Union terminated the strike (R. 2036–2037; 1300–1301, 1366–1367).

Petitioner reinstated all strikers who applied with the exception of four, three of whom were union officers and the fourth the sister of an officer. These employees, along with a number of others, picketed petitioner's plant on the morning of July 15. Some name calling and minor disorders occurred, the four employees were selected for arrest, they were charged with disorderly conduct, and, after prosecution conducted by petitioner's attorney before the local police court, the complaints in their cases were placed "on file" (R. 2036–2037; 245, 247–248, 267, 269–270, 302–305, 403–405, 1219–1221, 1300–1301, 1866–1868). Upon the basis of a stipulation of the parties (R. 801) that this meant, under local practice, "that at any time the complaint could be taken out of the file and the man found either guilty or not guilty," the Board found that the four employees were neither convicted nor acquitted (R. 2037).[2] The picketing in which the four employees were engaged at the time of their arrest violated an injunction issued by a state court on July 12 which enjoined all strike ac-

[2] As the court below pointed out (R. 2091, note), portions of the record other than the stipulation indicate that the result of the trial was equivalent to a suspended sentence (see R. 1864–1865).

tivity on the ground that the strike was illegal under Massachusetts law because one of its objectives was to obtain a compulsory arbitration clause (R. 2036–2037; 1220–1221, 1860–1864). Many of the employees whom petitioner reinstated had also engaged, along with the four arrested employees, in the picketing and the minor disorders which occurred on July 15 (R. 2037, 2038–2039; 245–246, 268–269, 280–282, 288, 303–304, 403–404, 1043–1050, 1221).

Upon the foregoing evidentiary findings, the Board found that petitioner had interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act, thus violating Section 8 (1) of the Act (R. 2011, 2016, 2022, 2035); had discriminatorily refused to reinstate the four employees in violation of Section 8 (1) and (3) of the Act (R. 2039); and had, on June 5, 1937, and at all times thereafter, refused to bargain collectively with the Union, in violation of Section 8 (1) and (5) of the Act, thereby prolonging the strike (R. 2035). The Board found further that the contracts entered into with the individual employees were void; that any defections from the Union were the result of petitioner's unfair labor practices; and that, even if it be assumed that petitioner's refusal to reinstate the four employees did not constitute an unfair labor practice, their reinstatement was necessary to effectuate the policies of the Act (R. 2005, 2019, 2021, 2041, 2042–2043).

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The Board's order required petitioner (1) to cease and desist from its unfair labor practices, from giving effect to the illegal contracts, and from in any other manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act; (2) upon request, to bargain collectively with the Union as the exclusive representative of petitioner's employees; (3) to offer reinstatement with back pay to the four employees discriminated against; (4) to notify the employees that the contracts were illegal; and (5) to post notices (R. 2044–2046).

Thereafter, the Board filed in the court below a petition for enforcement of its order (R. 1–5). On April 2, 1941, the court handed down its opinion and entered its decree enforcing the Board's order in full, except for minor modifications not here material (R. 2070–2101).[3]

ARGUMENT

1. Petitioner contends (Pet. 7–8, 9, 10–11, 12–14) that it was beyond the Board's power to re-

[3] The court modified the form of notices so as to conform with the Board's present practice, approved in *National Labor Relations Board* v. *Express Publishing Co.*, No. 442, this Term, decided March 3, 1941; set aside the "work relief" provision held invalid in *Republic Steel Corp.* v. *National Labor Relations Board*, 311 U. S. 7; and modified the provision requiring petitioner to notify the employees that the contracts were invalid so as to make that provision conform with the decisions of this Court in *National Licorice Co.* v. *National Labor Relations Board*, 309 U. S. 350, and *American Mfg. Co.* v. *National Labor Relations Board*, 309 U. S. 629 (R. 2090, 2092–2093, 2098, 2100–2101).

quire the reinstatement of the four employees (*supra,* pp. 6–7) who engaged in a tortious strike and were charged with and tried for disorderly conduct.[4] The Board's conclusion that these offenses were not the ground upon which petitioner eliminated the four employees is supported by the fact that petitioner reinstated a number of other employees who were guilty, equally with the four, of every offense upon which petitioner relies (*supra,* p. 7). "* * * the evidence does not show that [petitioner] had any rule or policy against the employment of such persons or that the refusal to reinstate * * * was based upon [their] conviction or indictment." *Eagle-Picher Mining & Smelting Co.* v. *National Labor Relations Board,* decided May 21, 1941 (C. C. A. 8).

Petitioner asserts that the decision of this Court in *National Labor Relations Board* v. *Fansteel Metallurgical Corp.,* 306 U. S. 240, bars reinstatement of the employees in question. But neither of the two bases of decision in the *Fansteel* case—aggravated criminal conduct and a discharge for that reason—is present here. The quantitative and qualitative differences between the employee conduct in that case and the conduct involved here is apparent. The Circuit Courts of Appeals have uniformly held that the *Fansteel* decision does not require a denial of the normal reinstatement rem-

[4] The offense consisted of calling employees who returned to work "scabs" and "rats" (R. 2037; 1040–1041, 1043–1046, 1050).

edy to employees who engage in the types of minor misconduct—such as picket-line bickering and name calling—which are the usual unfortunate accompaniment of labor disputes. *National Labor Relations Board* v. *American Mfg. Co.*, 106 F. (2d) 61, 67–68 (C. C. A. 2), modified and affirmed, 309 U. S. 629; *Republic Steel Corp.* v. *National Labor Relations Board*, 107 F. (2d) 472, 479–480 (C. C. A. 3), certiorari denied on this point, 309 U. S. 684; *National Labor Relations Board* v. *Stackpole Carbon Co.*, 105 F. (2d) 167, 176 (C. C. A. 3), certiorari denied, 308 U. S. 605; *National Labor Relations Board* v. *Colten*, 105 F. (2d) 179, 183 (C. C. A. 6); *Stewart Die Casting Corp.* v. *National Labor Relations Board*, 114 F. (2d) 849, 855–856 (C. C. A. 7), certiorari denied, No. 615, this Term. See also Note, *Employee Misconduct Under the Wagner Act: Developments Since the Fansteel Case*, 39 Col. L. Rev. 1369. And the illegality of the strike under state law because the Union sought, *inter alia*, an arbitration clause (see R. 2086–2087), cannot serve to render the reinstatement remedy inappropriate to effectuate the policies of the National Labor Relations Act. Since petitioner readily took back all of the strikers except the four here involved, it must have been plain to the employees that the exercise of rights guaranteed by the Act, and not participation in an illegal strike, constituted the ground for the discrimination. The reinstatement remedy is plainly appropriate to dissipate these coercive effects. Cf. *Phelps Dodge*

Corp. v. *National Labor Relations Board,* Nos. 387, 641, this Term, decided April 28, 1941.

2. Petitioner contends (Pet. 9, 10, 11, 12, 15) that the Board's findings and order infringe petitioner's right of freedom of speech insofar as they treat the communications which petitioner addressed to its employees during the strike (*supra,* p. 5) as violations of the Act. But, as the court below held (R. 2092, 2095, 2097), the Board's ultimate finding that petitioner violated Section 8 (1), and the order based thereon, are fully supported entirely apart from the communications.[5] The Board's order contains no provision comparable to that held invalid in *National Labor Relations Board* v. *Ford Motor Co.,* 114 F. (2d) 905 (C. C. A. 6), certiorari denied, No. 661, this Term, i. e., a provision requiring the employer to cease and desist from distributing to its employees pamphlets disparaging labor organizations. Furthermore, it appears from subsequent decisions of the Sixth Circuit[6] that its decision in the *Ford*

[5] Contrary to petitioner's assertion (Pet. 15) that "the Court below held that the Board erred in finding that the Company's communications with its employees constituted a violation of Section 8 (1) of the Act," the court expressly stated that it did not find it necessary to pass on the point (R. 2095).

[6] See *National Labor Relations Board* v. *P. Lorillard Company,* decided February 14, 1941; *National Labor Relations Board* v. *Dow Chemical Company,* 117 F. (2d) 455, 456–457; *Atlas Underwear Co.* v. *National Labor Relations Board,* 116 F. (2d) 1020, 1023. See also *Midland Steel Products Co.* v. *National Labor Relations Board,* 113 F. (2d) 800, 804, decided prior to the *Ford* case.

case rested upon the court's determination that the literature which the employer distributed was not in fact coercive. That decision turned, therefore, on its own particular facts and is not in conflict with the decision below, as petitioner asserts (Pet. 15). The only question here is whether petitioner's abusive propaganda did in fact coerce and intimidate the employees in the circumstances of this case; on that question, the conclusion reached by the Board is plainly correct.

3. Petitioner contends (Pet. 9, 10, 11, 16–17) that it could not have refused to bargain collectively within the meaning of Section 8 (5) because the Union, although designated as their representative by a large majority of the employees in an appropriate unit, did not seek to bargain on behalf of all the employees in the unit but only on behalf of its members. The court below termed this contention a "technical point raised by [petitioner] as an afterthought to excuse its refusal to bargain with the representatives of its employees" (R. 2088). The Board's unchallenged findings, supported by substantial evidence (*supra,* p. 4), are to the effect that, prior to the refusals to bargain, petitioner and the Union had agreed that, although the recognition clause in any agreement reached would be a "members only" clause, petitioner would extend the provisions of the contract to all employees. And petitioner in fact extended to all

employees the benefits of the preliminary contract. Thus the Union was actually bargaining on behalf of all the employees in the unit (see R. 2088). Moreover, in rejecting the Union's requests to resume negotiations, petitioner did not place its refusal on the ground that the Union was not bargaining for the whole unit; on the contrary, the parties apparently at all times remained in agreement that the contract should contain a "members only" clause, and that its terms should in fact apply to all employees in the unit. Finally, even if the question which petitioner urges could be raised on this record, the question itself is plainly of extremely rare occurrence in the administration of the Act, and may not be termed one of general importance.

4. Petitioner contends (Pet. 10, 12, 17–18) that the order requiring it, upon request, to bargain collectively with the Union should not have been enforced without a redetermination of majority representation by an election. But the Board found, on ample evidence, that the defections from the Union inferable from employee signatures to the "back-to-work" petitions and the individual contracts (*supra*, p. 5) were the direct result of petitioner's illegal conduct during the strike; hence the asserted defections were ineffective to destroy the Union's status as the freely chosen majority representative. *National Labor Relations Board* v. *Bradford Dyeing Ass'n*, 310 U. S. 318, 340;

International Association of Machinists v. *National Labor Relations Board*, 311 U. S. 72, 82.[7]

5. Petitioner contends (Pet. 9, 10, 12, 18–19) that the court's enforcement of the Board's general cease and desist order (R. 2045, 2100) is contrary to the principles laid down in *National Labor Relations Board* v. *Express Publishing Co.*, No. 442, this Term, decided March 3, 1941. But the present case, as the court below held (R. 2096–2097), is manifestly one in which the general cease and desist order is valid because the employer's unfair labor practices were not "isolated acts in violation of the right of self-organization" but, on the contrary, constituted "persistent attempts by varying methods to interfere with the right of self-organi-

[7] The decisions in *National Licorice Co.* v. *National Labor Relations Board*, 309 U. S. 350 and *National Labor Relations Board* v. *Fansteel Metallurgical Corp.*, 306 U. S. 240, upon which petitioner relies (Pet. 18), are plainly inapposite. In the *National Licorice* case this Court expressly noted that the propriety of the Circuit Court of Appeals' modification of the bargaining order was not before it for decision (309 U. S. at 359). In the *Fansteel* case valid discharges had changed the personnel in the appropriate unit to such an extent that it was apparent that the loss of majority might be attributable to reasons other than the unfair labor practices (306 U. S. at 261–262). The decision in *Hamilton-Brown Shoe Co.* v. *National Labor Relations Board*, 104 F. (2d) 49 (C. C. A. 8), upon which petitioner also relies (Pet. 18), has been overruled by the later decision of this Court in *International Association of Machinists* v. *National Labor Relations Board*, 311 U. S. 72, 74. Moreover, it was of doubtful authority even prior to the *Machinists* decision in view of the later decision of the Eighth Circuit in *Bussman Manufacturing Co.* v. *National Labor Relations Board*, 111 F. (2d) 783.

zation in circumstances from which the Board or the court below found or could have found the threat of continuing and varying efforts to attain the same end in the future." *National Labor Relations Board* v. *Express Publishing Co., supra.*[8]

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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MAY 1941.

[8] Compare *Oughton et al.* v. *National Labor Relations Board*, decided April 4, 1941, opinion on settlement of decree (C. C. A. 3); *American Enka Corp.* v. *National Labor Relations Board*, decided April 7, 1941 (C. C. A. 4); *Bethlehem Steel Company* v. *National Labor Relations Board*, decided May 12, 1941 (App. D. C.); cf. *Pacific Gas & Electric Co.* v. *National Labor Relations Board*, decided March 31, 1941 (C. C. A. 9).

U. S. GOVERNMENT PRINTING OFFICE: 1941